

Mo. DNR denies Water Quality Certification for St. Johns project

By Liz Anderson

The Missouri Department of Natural Resources (DNR) late Monday denied the Corps of Engineers' request for Water Quality Certification for the St. Johns Bayou-New Madrid Floodway flood control project

The denial was handed down "without prejudice" (whatever that means).

Scott Totten, Director of the Water Protection and Soil Conservation Division of the DNR said Tuesday in a telephone interview that the DNR is "uncertain" of the project's ability to protect the water quality of the state.

Many portions of the project would have an impact on water quality, Totten said, and while impacts could be mitigated, the levee closure was still a concern.

He said the DNR does not feel certain that appropriate mitigation has been proposed for those impacts.

Big Oak Tree State Park is still a part of the project, Totten said, and when asked what the DNR intends to do about the park's survival, when they had denied the Water Quality Certification and halted the project, he said their action Monday gave "no finality to Water Quality Certification on the project".

He said if the Corps addresses their concerns, they can reapply for the project and be certified.

He said while they in the Missouri Department of Natural Resources are "not Fish and Wildlife people, but water quality folks", the U.S. Fish and Wildlife Service raised a number of habitat issues that could impact on water quality.

He said they are concerned that the proposed mitigation for the project would not be protective of fish habitat and, therefore, would not offset those impacts.

He said they have said for the past two years that they wanted all of the resource agencies to agree on mitigation, and that agreement has not been forthcoming.

While the Environmental Protection Agency has signed off on the project, saying it is "no longer environmentally unsatisfactory", the Fish and Wildlife Service has maintained that mitigation for this project would not be acceptable to them on land either behind the levees or in the batture lands between the levees.

Yet, they demand that the mitigation lands, the more than 8,300 acres of mitigation land, be purchased in this immediate vicinity.

There is no other land available.

The purpose of the St. Johns Bayou-New Madrid Floodway flood control project is to stop flooding, flooding of prior converted farmland, and to provide an outlet for impounded local water in communities.

The Fish and Wildlife Service believes it is the flood pulse, the actual flooding on the land, that is beneficial. They have said repeatedly, that the project cannot be mitigated because the connectivity with the river would be limited with the project in place.

Lynn Bock, attorney for the St. Johns Levee and Drainage District said Tuesday, "It appears to me that the Department of Natural Resources doesn't want to do anything about Big Oak Tree State Park, and have decided the people of Southeast Missouri don't deserve flood control.

"It is amazing to me that we have gotten through all of the federal hurdles, only to have the State of Missouri throw up a roadblock to the project.

"We should have some sort of voice in Jefferson City, and I'm going to make sure our voice is clear," Bock said. "The Senate Majority leader is the state senator for this area that is directly impacted by the DNR decision.

"The state is heading into an unprecedented budget crisis and they will have no money to spend on Big Oak Tree State Park, and they just turned away \$2.5 million in federal funding that would have been spent on the park.

"It is beyond negligence, it's malfeasance".

The Corps of Engineers called DNR Director Stephen Mahfood last Thursday, asking if they would like to meet Friday with them to discuss the application for Water Quality Certification as the decision deadline of Monday drew near.

The Corps was notified around 10 a.m. Friday that the DNR would like to meet with them and with representatives of the U.S. Fish and Wildlife Service, and the Corps chartered a plane and flew to Jefferson City.

The meeting lasted two hours, but agreement was not reached.

The DNR said during the meeting Friday, the Fish and Wildlife Service agreed to abide by the recommendations of an independent, third-party scientific review panel aimed at resolving the remaining conflicts on technical, scientific, hydrological and water quality issues.

This part of the proposal was presented to the Memphis District in writing Monday morning, but was rejected by the Corps and local interests. It would delay implementation of the project another year or two, and who would pick the “independent” review panel?

Also submitted Monday was a Memorandum of Agreement between the Corps and DNR concerning the work at Big Oak Tree State Park.

The Corps has no problem with including that in the mitigation for the project, and their plan calls for purchasing an additional 1,000+ acres adjacent to the park, doubling its size.

The letter of denial, sent from Totten to Col. Jack V. Sherer, District Engineer of the Corps of Engineers, says: “Despite extensive review and efforts to resolve water quality issues surrounding this project, disagreement about mitigation for the project continues to exist between the federal agencies.

“Because of this disagreement, we can not insure that water quality and wetlands are protected.

“In addition, your staff has not enunciated a detailed, enforceable plan for the protection of the water quality and water resources of Big Oak Tree State Park that contains the specific measures requested by the department in comment letters of December 12, 2001, and August 19, 2002.

“Consequently, at this time we have no choice but to deny, without prejudice, your request for a Section 401 water quality certification for this project.

“However, once the Corps resolves the remaining conflicts related to the mitigation plan and concerns that exist regarding the project’s impact on water quality and water resources, including those of Big Oak Tree State Park, the Department of Natural Resources once again pledges to expedite review of Section 401 water quality certification for this project.

“As you know, the Corps has the option of appealing this decision to the Missouri Clean Water Commission or reapplying for a certification,

“If you would have any questions regarding the Department’s decision in this matter, or need information on how to appeal the department’s decision or reapply for a certification in the future, please do not hesitate to contact me at (573) 751-5998.

“Sincerely,

“WATER PROTECTION & SOIL CONSERVATION

“Scott B. Totten”

The Corps of Engineers is “reviewing their options,” according to Larry Sharpe, project manager for the St. Johns project.

Comments of Representative Jo Ann Emerson

(WASHINGTON, DC) — “I am extremely disappointed by Missouri DNR’s decision to deny water quality certification for the St. John’s - New Madrid Floodway Project.

“Clearly this decision is one of many missteps by the DNR who historically have failed to realize the many benefits that appropriate and much-needed flood protection would have on the communities affected by this decision.

“However, I am sure that the Army Corps of Engineers will be looking into appealing this denial and I am certain that, like me, they see this as one more hurdle that must be cleared to ensure that the residents, businesses and minority communities in the area have access to both flood protection and economic development opportunities in the future.”

Comments of Senator Kit Bond

“This extremely disappointing decision underscores how hard it is for poor, rural citizens to get help from the bureaucracy even when they have the bipartisan support of people like former Senator Tom Eagleton, Vice President Gore, the Emersons and many others. The people who need this flood control protection have waited too long and have made many compromises and they deserve the same level of protection received by rich, urban folks and that is why I am going to keep fighting for them.”

Comments of Dr. Martha Ellen Black

“To me, it’s just unbelievable. Just unbelievable. In this time with terrorists and Iraq, when we are becoming aware of how precious human life is, not focusing on our most valuable resource -- our people -- it’s unbelievable.

“It makes me understand the people who get so frustrated saying the system does not work.

“In this instance, the system has not worked.”